

Message

From: Dizon, Ninia R (LAW) [ninia.dizon@alaska.gov]
Sent: 5/15/2019 5:00:25 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
CC: Knudson, Kip C (GOV) [kip.knudson@Alaska.gov]; Clarkson, Kevin G (LAW) [kevin.clarkson@alaska.gov]
Subject: Letter to EPA from AG Clarkson
Attachments: 5-15-19 Letter to EPA re Section 404(c) of the CWA.pdf

Dear Mr. Leopold,

Please find attached letter sent on behalf of Alaska Attorney General Kevin G. Clarkson. The original will follow by mail.

Thank you.

Kind regards,

Ninia Dizon
Executive Secretary
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Exhibit A, page 1 of 3



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law
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May 15, 2019

Matthew Z. Leopold, General Counsel
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *Proposed Determination of the U.S. Environmental Protection Agency
Region 10 Pursuant to Section 404(c) of the Clean Water Act*

Dear Mr. Leopold:

I write concerning an unlawful action taken by the United States Environmental Protection Agency (EPA) under the administration of President Obama that, to date, EPA has declined to withdraw. Specifically, EPA continues to keep in place the Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(C) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, issued in July 2014 (the "Proposed Determination"), which has indefinitely suspended the State's ability to provide for the development of mineral resources on certain state lands in Southwest Alaska. EPA's withdrawal of this unlawful action by the prior administration is long overdue.

Briefly, on February 28, 2014, EPA publicly announced that it was commencing a process to potentially veto under Clean Water Act (CWA) Section 404(c) a necessary permit for mining on state lands containing substantial mineral resources known as the Pebble deposit. EPA's action was based on a watershed assessment that had no regulatory foundation and an interpretation of the CWA that lacked any legal basis. The Proposed Determination was based on hypothetical mining scenarios that have since been demonstrated through the ongoing 404 permitting process for the Pebble Mine to lack a factual basis. Even worse, EPA's process leading to the Proposed Determination was so infected with bias against a mine that an Alaska federal district court judge was compelled to grant a preliminary injunction halting all EPA work on the veto in November 2014. The House Committee on Oversight and Government Reform conducted an investigation of EPA's actions in this matter and concluded "that EPA employees had inappropriate contact with outside groups and failed to conduct an

Exhibit A, page 2 of 3

Matthew Z. Leopold
Re: *Proposed Determination of the U.S. Environmental Protection
Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act*

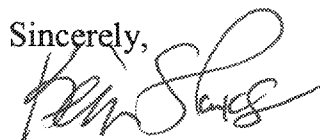
May 15, 2019
Page 2 of 2

impartial, fact-based review of the proposed Pebble mine.”¹ One wonders why EPA, under the Trump Administration, would continue to defend such an action.

The lands at issue in this matter were conveyed to the State by the Alaska Statehood Act of 1958 and related federal acts and were intended to provide for the State’s overall economic and social well-being. We were heartened in July 2017 when EPA published notice of a proposal to withdraw the illegal Proposed Determination, but we were shocked and disappointed in January 2018 when EPA decided to suspend that withdrawal. EPA’s decision to suspend the withdrawal appears to be based on the same assessment that the federal court and U.S. House Committee on Oversight and Government Reform found to be infected with bias and lacking in facts. By keeping the illegal Proposed Determination in place, EPA is discouraging investment in mineral resource development in Southwest Alaska and throughout the state, and breaking the promise of the Alaska Statehood Act that these lands could be developed for the benefit of the State’s economy. The longer the Proposed Determination remains in place, the greater the risk that the proposed veto will become a *fait accompli* as investors look for a more predictable opportunities for natural resource development.

The State continues to evaluate its options concerning EPA’s refusal to withdraw the Proposed Determination, including possible litigation against EPA. We would much prefer that EPA take the right step for Alaskans and the rule of law, withdraw the Proposed Determination, and allow the ongoing 404 permitting process for the Pebble Mine to proceed without the specter of EPA’s veto. We certainly hope that the current Trump Administration will not continue to perpetuate the illegal action taken by the former administration of President Obama to thwart natural resource development in Alaska.

Sincerely,



Kevin G. Clarkson
Attorney General

cc: Doug Hoelscher, Director Intergovernmental Affairs
Representative Don Young
Senator Lisa Murkowski
Senator Dan Sullivan

¹ Letter from House Oversight Committee to EPA Administrator McCarthy (Nov. 4, 2015), <https://republicans-oversight.house.gov/wp-content/uploads/2015/11/2015-11-04-JC-CLJJ-to-McCarthy-EPA-Bristol-Bay-due-11-18.pdf>.